IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTIETH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 1474 of 1997

Between:

Vijaya Bank Workers' Organisation rep. By its Joint Secretary,

Mallikarjun S.Madinur, s/o Siddareddeppa Madinur, C/o Zonal Office,

Vijaya Bank, Hyderabad.

..... PETITIONER

AND

1. Vijaya Bank, Head Office: 41/2, M.G.Road, Bangalore-560 001

   rep. By Chairman &Managing Director.

2. Union of India, rep. By its Secretary, Ministry of Finance (Banking Division), New Delhi.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or writ more particularly one in the nature of writ of Mandamus declaring the circular No.51/94 dated 03-03-1994 including the letter No.PER/IRD/1923/96 DT.06-09-1996 as illegal, arbitrary and consequently set aside the same and pass such further or other orders as this Hon'ble Court deems fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.G.VIDYASAGAR

Counsel for the Respondents: MR.K.ANUP KUMAR

The Court made the following :

O R D E R:

This writ petition is filed by the Joint Secretary of the Vijaya Bank Workers Organization to declare the circular No.51/94, dated 03-03-1994, which was followed by a letter No.PER:IRD:1923:96, dated 06-09-1996, as illegal and arbitrary and consequently to set aside the said proceedings.

2. The members of the petitioner-organization are the ex-service men, who were recruited in various posts in the 1st respondent-Bank. Most of them were recruited and posted as Security Guards. It is an admitted fact that as per the rules and settlement between the 1st respondent-bank and its employees, prior to 13-03-1992, the said post carries special allowance by virtue of the nature of the functions to be discharged or because of the special responsibilities attached to the said post. The special allowance was not being taken into account while fixing the basic pay and allowances of the ex- servicemen as there was a special procedure requiring fixation of the pay of the ex-service men in order to protect their last pay drawn. While fixing the basic pay of the ex-servicemen, special allowance that is admissible to the said post were not taken into account. However, by virtue of the modified circular No.51/1994, dated 03-03-1994, the 1st respondent-bank proposed to modify the method of fixation of the pay of the ex-service men, who were recruited by them as Security Guards. As per the said modified scheme, the special allowance would also be taken into account as part of the pay of re-employed ex-servicemen, while

equating their last pay drawn. As the said method adopted by the 1st respondent-bank was causing some heart-burn to the ex-servicemen, they made a representation dated
05-04-1994, stating that the implementation of the modified method would result in recovery of amounts already paid to them. In pursuance of the said representation, the 1st respondent-bank kept in abeyance the implementation of the circular dated 03-03-1994, for the time being and finally as per the directions of the Union of India represented by its Secretary who is 2nd respondent herein, the 1st respondent-bank implemented the circular dated 03-03-1994, with effect from 06-09-1996. As a result the pay and dearness allowance of the ex-servicemen were re-fixed and in the process of equating to that of the last pay drawn, while in the army service, the special allowance was also taken into account, thereby refixed the salary reducing to the extent of the special allowance. Therefore, the petitioner-organisation, being aggrieved by the action of the respondents in issuing circular dated 03-03-1994,has come up with the present writ petition.

3 . A counter has been filed on behalf of 1st respondent-Bank, opposing the contention of the petitioners. It is stated that various circulars have been issued from time to time prescribing the mode of fixation of the pay of the ex-servicemen, who were recruited by the 1st respondent Bank. As per the said method, the initial pay and dearness allowance would be equated to that of the last pay drawn by taking into account the pension, which the ex-serviceman would receive towards his army service, though, under the original circulars, the special allowance paid, was not taken into account while fixing the pay and allowances. But, however, subsequently, as per the directions of the 2nd respondent, the 1st respondent-Bank was compelled to modify the method of fixation of the pay and allowances and accordingly modified the circulars so issued to include the special allowance while fixing the pay and allowances of the ex-servicemen, at the time of recruiting them into the services of the 1st respondent-Bank.

4. Heard both sides.

5. The learned counsel for the petitioner-organisation, though contended that the said method adopted by the 2nd respondent as per the new or modified circular with retrospective effect is illegal and unsustainable, but, however, he conceded that the

circular was given effect from 06-09-1996, and therefore, the petitioner-organisation is not serious about the validity of the modification. But, However, confined to the proposed action of recovery of amount paid in excess, to the extent of the said special allowance, the learned counsel relied upon the Judgment of the Apex Court in **State of Andhra Pradesh and others V. G.Sreenivasa Rao & others** and contended that in almost identical circumstances, the Apex Court while negateving the scheme of 'equal pay for equal work', but however, ordered not to recover the amounts already paid by virtue of the orders of the High Court. Applying the same principle to the case on hand, the petitioner –organisation sought for similar direction as recovery would cause harsh to the members of the petitioner-organisation.

6. As the 1st respondent-Bank is only implementing the policy of the 2nd respondent, there is no justification or any merit warranting interference by this Court. With reference to the recoveries, the learned counsel for the 1st respondent contended that modified circular has already been implemented to the members of the petitioner-organisation, who have received any amounts in excess of the pay to which they are not entitled to and therefore they are liable to repay the same. Therefore, there is no merit in the contention of the learned counsel for the petitioner. The learned counsel also contended that the Judgment of the Apex Court, relied upon by the petitioner would not apply.

7. Considering the material available on record and contentions, it is that the petitioner-organisation is not entitled to the relief sought for, but in so far as implementation of modified circular with retrospective effect is concerned, the respondents are not entitled for such implementation. Admittedly, as per the rules in vogue, the pay of the members of the petitioner-organisation was fixed but it is only by the modified circular dated 03-03-1994, the special allowance was proposed to be included in the pay and allowances for the purpose of equating with the last pay drawn by the ex-servicemen. If such method is adopted with retrospective effect, it would certainly result in recovery of certain amounts, to the extent of the special allowances from the members of the petitioner organization and that if such recoveries were ordered at this belated period, it would cause real hardship to them. This situation had arisen because of the action of the 1st respondent-bank and not for any mistake that was committed by the members of the petitioner-organisation. Further on the representation the circular was not given effect upto 1996. In addition, as the difference is only small amount, it would not be proper to order recovery of

such amounts from the members of the petitioner-organisation, who were holding the last grade posts. The observations of the Apex Court, relied upon by the petitioner are also equally applicable to the present case. Under the above circumstances, the respondents are directed not to make any recoveries in respect of special allowances already paid to the members of the petitioner organization before implementing the modified circular dated
03-03-1994 from 06-09-1996.

8. With the above direction, the Writ Petition is disposed of. No costs.

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S.ANANDA REDDY,J.

20-08-2004.

Mjl/*

To

1. The Chairman & Managing Director, Vijaya Bank, Head Office: 41/2, M.G.Road, Bangalore-560 001

2. The Secretary, Union of India, Ministry of Finance (Banking Division), New Delhi.

3. 2 CD copies.